IN THE SUPREME COURT OF THE UNITED STATES

NO. _____

OCTOBER TERM, 2018

MUHAMMED TARIQ CAMRAN,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Question Presented

Should this court resolve the split between the Fourth and Eleventh Circuit about the probity of the fact that a vehicle is a rental in the reasonable suspicion calculation? *Compare United States v. Smith*, 799 F.2d 704, 707 (11th Cir. 1986) (rental in a 'drug corridor' insufficient to create reasonable suspicion); *United States v. Bowman*, 884 F.3d 200 (4th Cir. 2018) (following the Eleventh Circuit), *with United States v. Camran*, No. 17-50404, 2018 U.S. App. LEXIS 21041 (9th Cir. July 30, 2018) (unpublished) (rental status significant in reasonable suspicion determination).

List of Parties

[X] All parties appear in the caption of the case on the cover page.

[] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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Petitioner, Muhammed Tariq Camran, asks for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit entered May 31, 2017.

Opinion Below

The decision of the court of appeals, *United States v. Camran*, No. 17-50404, 2018 U.S. App. LEXIS 21041 (9th Cir. July 12, 2018), is attached as Appendix A.

Jurisdiction

The Ninth Circuit denied a timely petition for rehearing and suggestion for rehearing en banc on September 5, 2018.[1] This petition is being filed within 90 days. The Court has jurisdiction under 28 U.S.C. § 1254(1).

Involved Federal Law

The Fourth Amendment:

Unreasonable searches and seizures.

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Statement of the Case

This case began in March of 2017, when Border Patrol Agent (BPA) Kilana Massie was parked in an unmarked vehicle at the intersection of Old Highway 80 and Ribbonwood Road in the Southern District of California. The intersection was 2.5 miles north of the United States's border with Mexico. The area is rural and sparsely populated with a few residences but no public accommodations south of BPA Massie's position at the intersection. BPA Massie chose the intersection because of an increase in alien-smuggling traffic (i.e. a high-crime area.) BPA Massie has nine years of experience and knows the area. She knows what kinds of

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[1] *United States v. Muhammed Tariq Camran*, No. 17-50404, 2018 U.S. App. LEXIS 25215 (9th Cir. Sep. 5, 2018)

vehicles the locals drive.

At 10:30 p.m., BPA Massie saw a vehicle that she did not recognize as belonging to a local. It was a new-looking, clean SUV. It passed her heading south toward the border. She got the plate and learned it was a rental. This was important to BPA Massie because smugglers use rentals. The road headed south breaks off into several dirt roads that end near the border. In this area, portions of the border are unfenced.

BPA Massie waited for the SUV to return. It did so about 10 minutes later which was enough time for it to go known alien smuggling pickup point, JVR Rock. BPA Massie started to follow the SUV to the Interstate 8 which was a quarter-mile north. When BPA Massie got to the I-8, she could not see the SUV anymore, surmised that the SUV had taken off at high-speed, and she radioed ahead to have it stopped. Border Patrol stopped the car and inside were the driver, Camran as the passenger, and three undocumented immigrants.

Camran challenged the lawfulness of the stop because the Agent's rationale – any new looking rental that goes down Ribbonwood Road and comes back a short time later must be smuggling – is based on generic suspicion. There are millions of rented vehicles and the odds of any particular vehicle being a rental are substantial. If a fact is common enough that it is found with similar frequency between the guilty and the innocent, then it cannot help in the reasonable suspicion analysis. (For example, when BPA Massie said the SUV accelerated to high-speed on the I-8 freeway, she also admitted that driving 10 to 15 miles over the posted 70

m.p.h speed limit was the norm on the I-8. Nearly all the traffic on the I-8 is going very fast.)

The district court denied Camran's motion and relied on the high-crime area in which an experienced agent who knows the area and the locals sees something she finds suspicion. BPA Massie explained to the district court's satisfaction why she focused on the SUV that night, why the rental made her suspicious, and why she thought the SUV might be trying to flee. The district court noted that the reasonable suspicion is not a high standard and deferred to the agent's opinion that no rented vehicle could have any legitimate reason to go down Ribbonwood Road that night.

The Appeal

Camran preserved his suppression motion in a conditional plea agreement and argued to the Ninth Circuit that the only unique fact about Camran's stop was that the vehicle was a rental. But since that fact is generic – there are lots of rental vehicles on the nation's roadways – it cannot be the difference between a lawful and an unlawful stop. People traveling on the interstate freeways do not have lesser Fourth Amendment rights simply because that freeway is near the border.[2]

The Ninth Circuit affirmed the district court's reasonable suspicion finding and listed six grounds of suspicion:

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[2] *Almeida-Sanchez v. United States*, 413 U.S. 266, 274-75, 93 S. Ct. 2535, 2540 (1973).

- at night, high-crime area;

- rural, sparsely populated area 2.5 away from an unfenced part of the border;

- agent knew the area and did not believe the new and clean SUV belonged to a local;

- the SUV was rented and the agent knew that smugglers used rentals;

- the SUV went south down a road and came back in the right amount of time to have loaded people;

- the SUV got onto the freeway and was going very fast.[3]

Reasons to Grant the Writ

Reasonable suspicion is particularized suspicion.[4] The Ninth Circuit's decision, while reciting each ingredient in the reasonable suspicion soup, fails to note that the ingredients would give Border Patrol the ability to stop anybody that took a wrong turn off the freeway and happened to be driving a vehicle that Border Patrol found suspicious. Generic suspicion of classes of vehicles – i.e. new-looking rentals – sweeps a sizable percentage of the innocent motoring public.[5] Sometimes travelers on highways at night get off the road to simply look around or perhaps were trying to address some emergent and urgent biological necessity.

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[3] *United States v. Camran*, 2018 U.S. App. LEXIS 21041, *2-3.

[4] *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975).

[5] *United States v. Rodriguez*, 976 F.2d 592, 594-96 (9th Cir. 1992) (Hispanic defendants' presence on a notorious smuggling route, driving a putatively suspicious vehicle that appeared to have a heavy load not enough to create reasonable suspicion because it was insufficiently particularized).

In the Answering Brief, the United States conceded that the fact that the vehicle was a rental is not a suspicious fact standing alone.[6] In Camran's case, the rental fact is the key fact cited by BPA Massie for why she suspected the SUV was involved in smuggling. If the fact that the SUV was rental is not suspicious, then what is left is that the vehicle that went down a road that is near the border. It is as if Border Patrol has a functional checkpoint for non-locals. If Border Patrol can stop any vehicle they do not recognize just because it is a rental, then "many ordinary citizens" will be subjected to a "generality of suspicious appearance merely on hunch."[7]

The Ninth Circuit's decision is inconsistent with the Fourth Circuit's decision in *United States v. Williams* involved the same kind of 'experienced agent in a high-crime area' but found that kind of recitation of generic facts is insufficiently particularized to avoid sweeping too many innocent travelers.[8] *Williams* cites to harmonious Eleventh Circuit precedent.[9]

It has been a half-century since this Court invalidated the use of "drug

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[6] Answering Brief of the United States at 19.

[7] *United States v. Rodriguez*, 976 F.2d. at 596.

[8] *United States v. Williams*, 808 F.3d at 247.

[9] "The plan to return the car late, combined with the fact that Boyce was driving a rental car on a widely used interstate that also happens to be a known drug corridor, does not create a reasonable suspicion in this case. These factors "would likely apply to a considerable number of those traveling for perfectly legitimate purposes" and "do[] not reasonably provide ...suspicion of criminal activity." *United States v. Smith*, 799 F.2d 704, 707 (11th Cir. 1986).

courier profiles" because the inherent vagueness of the category sweeps in too many innocent travelers.[10] Whatever profile drug couriers have when it comes to how they purchase tickets and carry their luggage, but that profile also describes "a very large category of presumably innocent travelers, who would be subject to virtually random seizures were the Court to conclude that as little foundation as there was in this case could justify a seizure."[11]

If the drug courier profile includes too many innocent people, that should make the category "rental" too generic a category to create reasonable suspicion. The Fourth and Eleventh Circuits have the better view and Camran asks this Court to grant certiorari to review his case.

Conclusion

Camran would have won his suppression motion in the Fourth and Eleventh Circuit, but lost it in the Ninth Circuit. This difference in the law about this bedrock protection of the Bill of Rights justifies certiorari review.

Respectfully submitted,

Dated: December 2, 2018

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[10] *Reid v. Georgia*, 448 U.S. 438 (1980).

[11] *Id.* at 441.